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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/870,510	06/01/2001	Daniel Monget	BONN-054	7991

7590
James C. Lydon
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06/18/2002

EXAMINER

CHAUDHRY, MAHREEN F

ART UNIT	PAPER NUMBER
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1627

DATE MAILED: 06/18/2002

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/870,510

Applicant(s)

MONGET ET AL.

Examiner

Mahreen Chaudhry

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-26 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 12-26 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Objections

1. Claim 16 is objected to because of the following informalities: there is a typographical error in line 1 of the claim. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 12-20 and 22-23 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 00/09649 published by Rosnick et al. Rosnick et al. disclose a method for detecting microorganisms by detecting changes in pH, gas production or volatile acid production using a growth medium and sterilizable sealed container (abstract; p 1, lines 16+). Rosnick et al. disclose that when the microorganism to be detected is anaerobic then a gas impermeable seal is provided in a wall of the vessel (p 1; lines 22-24; p 8, lines 14+). Rosnick et al. disclose that microorganisms may be detected in clinical specimens including blood and other body fluids by culturing in a sterile growth medium in a transparent container followed by incubation (pp 8-9). Rosnick et al. further disclose that an increase in metabolic products are measured using a sensor comprising a solid support medium with an indicator medium immobilized on or within it (p 12, lines 18-21). Rosnick et al. additionally disclose that the indicator medium is visible from

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outside of the vessel (p 12, lines 21-24). Rosnick et al. discloses that several different fluorescent and visible pH indicator may be utilized to measure changes in pH or CO₂. Rosnick et al. disclose that the support medium may be made up of cellulose or positively or negatively charged ionic resins such as DEAE resins or DEAE cellulose (pp 16-17, lines 21+).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 21 and 24-25 and rejected under 35 U.S.C. 103(a) as being unpatentable over Rosnick et al. The applicability of Rosnick et al. to the instant invention has been discussed above. Rosnick et al. do not expressly disclose that the solid support material may be composed of those material recited in instant claim 21 or by polyethylene. However, the attachment of indicators to such support materials is conventionally practiced in the art and would have been obvious in view of Rosnick's teaching that the support medium maybe any substance to which a pH indicator may be covalently or non-covalently attached (p 16, lines 21+). Rosnick et al. also do not expressly disclose the diameter of support particles within a specific range. However, it would have been obvious to one having ordinary skill in the art at the time of the invention to have utilized particles of an appropriate size.

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6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 5,795,773 issued to Read et al. discloses a device for detecting microorganism comprising a sterilizable vessel and a sensor.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mahreen Chaudhry whose telephone number is (703) 605-1200. The examiner can normally be reached on Monday – Friday (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jyothsna Venkat, can be reached at (703) 308-2439. The official fax phone number for the organization where this application is proceeding or assigned is (703) 308-4556 or 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

mc
June 14, 2002



RALPH GITOMER
PRIMARY EXAMINER
GROUP 1200